*** HON'BLE SRI G.S. SINGHVI, THE CHIEF JUSTICE**

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AND

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***HON'BLE SRI JUSTICE G.V. SEETHAPATHI**

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+ W.P.NO.11519 of 2005

% Dated 13.6.2005

 # B. Nageswara Rao and 15 others

…. PETITIONER

Vs.

$ The Government of Andhra Pradesh,

Rep. by its Principal Secretary,

Panchayat Raj and Rural Development,

Secretariat, Saifabad, Hyderabad

and three others

…. RESPONDENTS

! Counsel for the Petitioners: Sri S. Ramachander Rao,

Senior Counsel assisted by

Sri K.R. Prabhakar

^ Counsel for the Respondents: Govt. Pleader for Services-II

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> HEAD NOTE:

? Cases referred

1) 1978 (2) SLR 340

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HON'BLE SRI G.S. SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SRI JUSTICE G.V. SEETHAPATHY

WRIT PETITION No. 11519 OF 2006

–

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Between:

B. Nageswara Rao and 15 others

……Petitioners

And

The Government of Andhra Pradesh,

Rep. by its Principal Secretary,

Panchayat Raj and Rural Development,

Secretariat, Saifabad, Hyderabad

and three others

……Respondents

:: ORDER ::

Counsel for the Petitioners : Sri S. Ramachander Rao,

Senior Counsel assisted by

Sri K.R. Prabhakar

Counsel for the Respondents : Government Pleader for

Services - II

Dated: 13-06-2006

Per G.S. SINGHVI, CJ

This petition is directed against order dated 6-6-2006 passed by the Andhra Pradesh Administrative Tribunal (for short 'the Tribunal) in V.M.A No.629 of 2006 in O.A No.3217 of 2006 and V.M.A No.628 of 2006 in O.A No.3218 of 2006.

The petitioners are working as Junior Assistants-cum-Bill Collectors in different Mandals of West Godavari District. They were initially engaged as temporary/part-time Bill Collectors/ Karobaris. In 2001, they and other similarly situated persons filed applications under Section 19 of the Administrative Tribunals Act, 1985 (for short 'the Act') for issue of directions to the State Government to regularize their services by asserting that on completion of 10 years service, they had acquired right to be regularized in accordance with the policy framed by the State Government. The applications filed by the petitioners and others were registered as O.A.Nos.9192, 9271, 9442 and 9628 of 2001. By an order dated 4-1-2002, the Tribunal disposed of the applications by directing the non-applicants to consider their cases for regularization of services in accordance with G.O.Ms.No.112, Finance & Planning (FW.PC.III) Department, dated 23-7-1997. The Government of Andhra Pradesh challenged the order of the Tribunal in Writ Petition Nos.2194, 2195, 2199 and 2307 of 2002. A Division Bench of this Court, after taking cognizance of D.O.Lr.No.6113/Mdl.II/2002 dated 20-3-2002 produced by the Additional Advocate General, held that in view of the policy decision taken by the State Government, it was not necessary to adjudicate on the merits of the writ petition. The Division Bench disposed of the writ petitions by directing the non-applicants to consider the cases of the petitioners for regularization of services against the available vacant posts of Bill Collectors in Gram Panchayats with a further direction to consider the cases of all eligible Bill Collectors for appointment to the posts of Executive Officer, Special Category-III (Panchayat Secretary) in accordance with the statutory rules notified, vide G.O.Ms.No.384, dated

22-12-2001. The operative parts of order dated 21-3-2002 passed by the Division Bench read as under:

> "Consequently, these writ petitions are disposed of directing the cases of Karobaris/part-time Bill Collectors/Bill Collectors for regularization of their services in accordance with their eligibility as per G.O.Ms.No.112, Finance & Planning (FW.PC.III) Department, dated 23-7-1997 as against the available sanctioned posts of Bill Collectors in Gram Panchayats.
>
> The petitioner, on completion of such exercise of regularization, shall also consider the cases of such of those eligible Bill Collectors in Gram Panchayats for appointment for the post of Executive Officer, Special Category-III (Panchayat Secretary) in accordance with the statutory rules notified in G.O.Ms.No.384, Panchayat Raj & Rural Development (Mdl.III) Department, dated 22-12-2001. There shall be an order accordingly.
>
> The process in this regard shall be completed, as undertaken by the petitioner, within a period of five months from the date of receipt of a copy of this order.
>
> The writ petitions are accordingly disposed of. There shall be no order as to costs."

During the pendency of the aforementioned writ petitions, the Division Bench passed an interim order dated 31-1-2002 in WPMP No.8389 of 2002 and other similar applications, the relevant extracts of which (this portion has been taken from copy of order filed by the petitioner along with the material papers) read as under:

> "The main controversy centers around is as to whether the surplus manpower pool provide by the Finance Department at all could be taken into consideration for the purpose of appointment as Panchayat Secretaries. The learned counsel appearing on behalf of the respondents-applicants strenuously contends that there is absolutely no reason or justification whatsoever to ignore the legitimate claim of the part-time Bill Collectors/Karobars and eligible substitute Village Administrative Officers and consider the cases of the surplus manpower pool provided by the Finance Department who have no experience whatsoever in managing the affairs of the village/Panchayat. At this stage, we do not propose to express any opinion whatsoever. But, at the same time, we are of the *prima facie* considered opinion that the Tribunal ought not to have issued such positive directions directing the petitioners herein to consider the cases of the respondents-applicants for being appointed as Panchayat Secretaries.
>
> Having regard to the totality of the facts and circumstances of the case, we consider it appropriate to grant stay of operation of the order of the Tribunal.

However, we further direct the petitioners herein not to make any further appointment to the post of the Panchayat Secretaries from out of the surplus manpower pool provided by the Finance Department. However, it shall be open to the petitioners herein to identify the eligible candidates from amongst the surplus manpower pool provided by the Finance Department. It is made clear that such of those who are already appointed from the surplus manpower pool provided by the Finance Department shall continue to discharge their functions subject to such further directions as may be issued by this Court in this batch of writ petitions.

We are also of the considered opinion that it would be appropriate for the Tribunal not to dispose of any further Original Applications following its own order in O.A.No.9192 of 2001 and batch, dated 4-1-2002 until this court finally disposes of all these writ petitions.

Sri S. Ramachander Rao, learned Senior Counsel and Sri P. Balakrishna Murthy, learned counsel appearing on behalf of the respondents-applicants request ten days time for filing counters in the writ petitions.

The writ petitions deserve early disposal as public interest requires such expeditious disposal.

Post these WPMPs on 18-2-2002."

In the course of hearing, the learned Additional Advocate General, appearing for the Government of Andhra Pradesh made a request for modification of order dated 31-1-2002. His request was accepted and following order was passed by the Division Bench:

"Having regard to the facts and circumstances of the case, we propose to modify the interim orders earlier granted by this Court on 31-01-2002, permitting the petitioners herein to make appointments to the post of Panchayat Secretaries from out of the surplus manpower pool provided by the Finance Department. However, such appointments, if any to be made by the petitioners, shall be subject to further orders to be passed in these writ petitions and other connected matters.

The petitioners herein shall clearly put the surplus manpower pool, who are likely to be appointed to the post of Panchayat Secretaries, on notice that their appointment shall be subject to further orders to be passed by this court in the batch of these writ petitions. The petitioners shall clearly notify in the order of appointment itself that the appointment does not confer any indefeasible right upon them and their appointment shall be subject to further orders to be passed by this court. However, the petitioners shall not make any such appointment from out of the surplus manpower pool provided by the Finance Department to the post of Panchayat Secretaries with regard to 2000

(two thousand) posts in the entire State of Andhra Pradesh. They shall remain unfilled. It is needless to observe that those 2000 (two thousand) posts shall necessarily have to be spread over covering all the districts in the State of Andhra Pradesh. There shall be an order accordingly."

In compliance of the directions given by the Tribunal and this Court, the services of the petitioners are said to have been regularized on the posts of Junior Assistant-cum-Bill Collectors, which they are presently holding.

On 26-5-2006, the State Government issued G.O.Ms.No.223 for facilitating appointment of 2087 Panchayat Secretaries on contract basis on a consolidated remuneration of Rs.2,000/- per month. The petitioners challenged the same by filing applications under Section 19 of the Act, which stand registered as O.A.Nos.3217 and 3218 of 2006. By an order dated 31-5-2006, the Tribunal suspended the operation of G.O.Ms.No.223. Immediately thereafter, the State Government filed applications for vacating interim order. The same were registered as V.M.A.Nos.628 and 629 of 2006. After hearing the representatives of the parties, the Tribunal, vide its order dated 6-6-2006, vacated the interim order, but directed that the appointments made pursuant to the Government Order shall remain subject to further orders, which may be passed in the original applications.

The petitioners have challenged order dated 6-6-2006 by asserting that while vacating interim order, the Tribunal overlooked the fact that in terms of the directions given by the High Court, the departmental authorities are under an obligation to consider their cases for appointment as Panchayat Secretaries and G.O.Ms.No.223 dated 26-5-2006 issued for appointment of Panchayat Secretaries on contract basis is nothing but an unsavory attempt to circumvent the directions given by this Court.

We have heard Sri S. Ramachander Rao, Senior Advocate appearing for the petitioners and the learned Government Pleader for Services – II and carefully perused the record, including the additional papers (91) filed by the counsel assisting
Sri Ramachander Rao.

A reading of Sections 14 and 15 of the Act makes it clear that the Tribunals have jurisdiction, powers and authority to adjudicate all disputes relating to service

matters. If the definition of 'service matter' contained in Section 3 (q), which is very wide and comprehensive, is read in conjunction with Sections 14 and 15, it becomes clear that the Tribunals can adjudicate disputes relating to recruitment and matters concerning recruitment to All India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services manned by a civilian and all other service matters including post-retirement matters. Section 24 of the Act, which begins with non-obstante clause, lays down that no interim order shall be made by the Tribunal unless copies of the application and document sought to be relied by the applicant are furnished to the opposite party and opportunity of hearing is given to such party. Proviso to this section empowers the Tribunal to dispense with the requirement of furnishing copy of the application and documents and of giving opportunity of hearing to the other side, if it is satisfied that the prayer of the applicant needs emergent consideration. Section 24 does not contain any guideline for exercise of the Tribunal's power to pass interim orders. Therefore, keeping in view the background in which the Tribunals were established, it is reasonable to take the view that the parameters, which are to be kept in view by the Civil Courts and High Courts for passing interim orders, shall also be applied by the Tribunal while adjudicating the applications for interim orders. This would necessarily mean that before passing an interim order, the Tribunal must feel convinced that the applicant has a strong prima facie case; that the balance of convenience is in his favour; that irreparable injury will be caused to the applicant if interim relief is not given to him/her and that it would be in public interest to pass an order of injunction/stay. In a given case, the Tribunal may feel satisfied that the applicant has a strong prima facie case and yet it may decline prayer of interim relief if the other two factors, namely, balance of convenience and irreparable injury, are not in his favour. Even if these three factors are found in favour of the applicant, the Tribunal may, keeping in view the larger public interest, refuse to stay the proceedings or action taken by the public employer. In other words, mere existence of strong prima facie case and factors like balance of convenience and irreparable injury in favour of the applicant are not sufficient for passing an order of interim injunction/stay. The Tribunal must also feel convinced that it will be in public interest to pass an interim order.

In cases involving termination of services, reversion or like, the Tribunal may, on being satisfied about the existence of a strong prima facie case in favour of the

applicant, pass an interim order by presuming that the balance of convenience is in his favour and that he would suffer irreparable injury if an order of injunction is not passed. It must also be remembered that an interim order in such cases is not likely to affect the rights of others. However, in matters involving challenge to the process of recruitment/selections, seniority, promotion etc., the Tribunal is duty bound to be extremely careful and circumspect in entertaining/accepting prayer for interim relief. In such matters, the Tribunal can, at the time of final adjudication, give appropriate relief to the aggrieved person. If the selection or recruitment process is found to be tainted by arbitrariness or patent violation of the statutory provisions or the constitutional code of equality or it is found that a particular candidate has been selected due to extraneous reasons or the entire process is vitiated due to mala fides, the Tribunal can nullify the selection, as also the consequential appointments, and direct holding of fresh selection. If the Tribunal comes to the conclusion that the applicant had been arbitrarily denied consideration for selection, then it can direct the concerned authority to consider his candidature along with other eligible persons. In an exceptional case, the Tribunal can also issue mandamus for appointment of a duly selected candidate who may have been denied appointment due to extraneous reasons. If the Tribunal is convinced that seniority of an employee has not been fixed in accordance with law, then, while disposing of the main application, it can give a direction for proper fixation of seniority with a further direction for consideration of his case for promotion to the higher posts. Similar course can be adopted in cases involving adjudication of disputes relating to inter-se-seniority and wrongful denial of promotion. However, the Tribunal cannot pass an interim order staying the process of selection/recruitment or exercise undertaken by the employer for making promotions merely because it feels satisfied that the applicant has a strong prima facie case. An interim order, which has the effect of stalling appointments or promotions, cannot be passed unless the Tribunal is convinced beyond any manner of doubt that the action or exercise undertaken by the public authority is grossly violative of the constitutional provisions or is vitiated due to mala fides. If an order of injunction is passed restraining the State or public authorities from making appointment/promotion against the vacant posts simply because the applicant is able to demonstrate that he has got a prima facie case, the functioning of the department or public institution is bound to be seriously jeopardized and at times the working of the department may come to a grinding halt. Such an order may also adversely affect unknown number of persons who may not

be parties to the application. In matters relating to seniority and promotions, an interim order, which has the effect of frustrating the impending promotions, must be avoided because, in the event of dismissal of the main application, the clock cannot be put back. The Tribunal cannot direct the State and public authorities to retrospectively promote the non-applicants and give them consequential benefits on the premise that the concerned employees had been deprived of promotion etc., on account of interim stay.

The sum and substance of the above discussion is that, in matters involving challenge to the process of selection/recruitment, appointment, promotion, seniority etc., the element of public interest is always against the grant of interim injunction, which may operate as a stumbling block and which may adversely affect the functioning of the department or public institution. Only in rarest of rare case, the Tribunal may pass an order of interim injunction, if it is fully convinced that the action complained against is per se violative of the constitutional or statutory provisions or is tainted by mala fides.

In **Ranbir Chandra v. Union of India**, a Division Bench of the Delhi High Court considered a somewhat similar issue and observed as under:

> "It is the general rule in writ petitions filed by civil servants that the impugned administrative action of the Government is set aside if the writ petition succeeds. The balance of convenience is in favour of not suspending the operation of the Government order. For, the individual writ petitioner can always be given the appropriate reliefs if his writ petition succeeds. The Government is a Government of law. It always implements the decisions of the courts giving such reliefs to the writ petitioners. But, it is extremely unusual for this Court to stop the operation of the Government Order merely because the writ petition seems to make out a prima facie case. There are various considerations against such a course. Since ordinarily it is the business of the Government and the Union Public Service Commission to go into the facts of a particular case of a civil servant, their examination of facts and decision to do justice in such a case is not ordinarily interfered with by this court. The issue of a stay against the Government order obstructs the functioning of the Government. Such obstruction should be avoided initially, unless it becomes inevitable when the writ petition is disposed of on merits. Rights of third parties also get prejudiced by premature stay suspending the operative of administrative action for which no compensation can be available or sufficient. It is, therefore, only in an extraordinary case that stay is granted in a writ petition by the civil servant against the Government. For instance, if the order of the Government is unjust or mala fide, then considerations of justice may justify the grant of stay. In the present case, the

impugned order is not said to be either unjust or mala fide. There is no reason, therefore, for departing from the usual practice of not granting stay in such a case."

In the light of the above, we shall now consider whether the petitioners have been able to make out a case for suspending the operation of G.O.Ms.No.223, dated 26-5-2006, which would necessarily result in preventing the government from appointing 2087 Panchayat Secretaries on contract basis on a consolidated remuneration of Rs.2,000/- per month, and whether the Tribunal committed any jurisdictional error or patent illegality by vacating interim order dated 31-5-2006.

The question whether the petitioners are eligible to be considered for appointment as Panchayat Secretaries in accordance with the rules notified, vide G.O.Ms.No.384 dated
22-12-2001, and whether they have the right to be considered for appointment as Panchayat Secretaries on contract basis is yet to be adjudicated by the Tribunal. The direction given by the Division Bench for consideration of their case postulates such consideration in accordance with the relevant rules and not de hors the rules. If the applications filed by the petitioners are ultimately allowed, the Tribunal may, at best, quash G.O.Ms.No.223 and direct the State Government to make regular appointment against the vacant posts of Panchayat Secretaries. In that event, the candidature of the petitioners will be considered in accordance with the relevant rules. They may or may not be selected for appointment. All this lies in the realm of speculation. Therefore, till the original applications filed by the petitioners are finally decided, there cannot be any valid ground or justification to stay the process initiated by the Government for making contractual appointments for a fixed period of one year and that too on a consolidated salary of Rs.2000/- per month.

Learned counsel for the petitioners could not convince us that contractual appointments proposed to be made by the State Government would adversely affect the right of their clients to be considered for appointment as Panchayat Secretaries in accordance with the relevant rules. Moreover, we find it impossible to accept the plea of the petitioners that the proposed appointments would cause irreparable injury to their rights or that the balance of convenience is in their favour. If the State Government is restrained from making appointments pursuant to G.O.Ms.No.223

dated 26-5-2006, the petitioners are not going to gain anything. On the other hand, the functioning of the department will be seriously affected, if the posts are kept vacant. Thus, the elements of balance of convenience and irreparable injury are clearly against the petitioners. In any case, it would be highly detrimental to the public interest if the government is not allowed to fill up the existing posts on contract basis. Therefore, we do not find any valid ground to interfere with the impugned order or restrain the government from engaging Panchayat Secretaries on contract basis and that too for a fixed period. If any of the petitioners fulfill the conditions of eligibility, then he can apply for being considered for appointment as Panchayat Secretary on contract basis.

With the above observations, the writ petition is dismissed.

While dismissing the writ petition, we deem it proper to take cognizance of the statement made by the learned Government Pleader for Services – II that in view of notification dated 9-6-2006 issued by the State Election Commission announcing elections for the panchayats, the process of recruitment initiated vide G.O.Ms.No.223 dated 26-5-2006 has been held in abeyance.

G.S.SINGHVI, CJ

G.V. SEETHAPATHY, J

13-06-2006

ks / svs

Note:

L.R. copy be marked.

(By order)

SVS